

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

)
 4 IN RE: STRYKER REJUVENATE) Case No. 13-MD-2441 (DWF/FLN)
 AND ABG II HIP IMPLANT)
 5 PRODUCTS LIABILITY LITIGATION)
)
 6 _____)
)
 7) St. Paul, Minnesota
 This Document Relates to) March 20, 2014
 8 All Actions) 9:24 a.m.
)
 9 -----

10
 11 BEFORE **THE HONORABLE DONOVAN W. FRANK**
 UNITED STATES DISTRICT COURT JUDGE AND
 12 BY TELEPHONE **THE HONORABLE FRANKLIN L. NOEL**
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

STATUS CONFERENCE PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFFS:

16 Plaintiffs' Lead Counsel
 Committee Chairperson: Meyers & Flowers
 17 PETER J. FLOWERS, ESQ.
 225 West Wacker Drive, Suite 1515
 18 Chicago, Illinois 60606

19 Plaintiffs' Lead Counsel
 Committee Members: Zimmerman Reed, PLLP
 20 GENEVIEVE M. ZIMMERMAN, ESQ.
 1100 IDS Center
 21 80 S. 8th Street
 Minneapolis, Minnesota 55402-2015

22
 Official Court Reporter: JEANNE M. ANDERSON, RMR-RPR
 23 Suite 146 U.S. Courthouse
 316 North Robert Street
 24 St. Paul, Minnesota 55101

25 Proceedings recorded by mechanical stenography;
 transcript produced by computer.

1 **APPEARANCES (Continued):**

2 **For the Plaintiffs:**

3 Plaintiffs' Lead Counsel
4 Committee Members (Continued):

5 Levin Papantonio Thomas Mitchell
6 Rafferty & Proctor, P.A.
7 BEN GORDON, ESQ.
8 316 S. Baylen Street, Suite 600
9 P.O. Box 12308
10 Pensacola, Florida 32591

11 Cory Watson Crowder & DeGaris
12 ANNESLEY H. DeGARIS, ESQ.
13 2131 Magnolia Avenue South
14 Birmingham, Alabama 35205

15 Leiff, Cabraser,
16 Heimann & Bernstein, LLP
17 WENDY R. FLEISHMAN, ESQ.
18 250 Hudson Street, Eighth Floor
19 New York, New York 10013

20 Weisman, Kennedy & Berris Co., LPA
21 ERIC KENNEDY, ESQ.
22 1600 Midland Building
23 101 Prospect Avenue West
24 Cleveland, Ohio 44115

25 Plaintiffs' Liaison Counsel:

 Liaison Counsel to the
26 District of Minnesota: Meshbeshier & Spence, Ltd.
27 ANTHONY J. NEMO, ESQ.
28 1616 Park Avenue South
29 Minneapolis, Minnesota 55404

 Liaison Counsel to
30 The State Courts: Kelly Bernheim & Dolinsky, LLC
31 JESSE BERNHEIM, ESQ.
32 8151 Peters Road, Suite 3200
33 Plantation, Florida 33324

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (Continued) :

For the Plaintiffs (Continued) :

Plaintiffs' Steering
Committee Members:

Bowersox Law Firm, P.C.
JEFFREY A. BOWERSOX, ESQ.
Kruse Woods One, Suite 320
5285 Meadows Road
Lake Oswego, Oregon 97035

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (Continued):

FOR THE DEFENDANTS:

Defendants' Lead Counsel:

Sedgwick Law LLP
KAREN E. WOODWARD, ESQ.
RAFAEL A. CAMPILLO, ESQ.
801 S. Figueroa Street, 19th Floor
Los Angeles, California 90017-5556

Defendants' Liaison Counsel:

Stinson Leonard Street LLP
TIMOTHY P. GRIFFIN, ESQ.
150 S. 5th Street, Suite 2300
Minneapolis, Minnesota 55402

P R O C E E D I N G S

I N O P E N C O U R T

1
2
3 THE HONORABLE JUDGE FRANK: You may all be seated.
4 I have the liberty of saying the following, because even
5 though Judge Noel is listening with our technology system,
6 for better or worse, he -- unlike the conference we just had
7 in chambers, he can't speak back. But, he chose not to have
8 the first day of spring in Minnesota, he is out in
9 California. Where probably some of you wished you were
10 right now.

11 In any event, I will just note for the record
12 that, as we have in the prior hearings, we have been with
13 counsel since 8:15 this morning. And obviously, same ground
14 rules as before, both sides are free to state whatever they
15 wish on the record today with respect to any issue, even
16 though we were kind of discussing the agenda items here.

17 And with that, maybe so we are clear, even though
18 everyone knows each other, we could have Plaintiffs note
19 their presence for the record? And then if there are other
20 individuals you want to note their presence, I will leave
21 that up to respective counsel.

22 MS. ZIMMERMAN: Good morning, Your Honor,
23 Genevieve Zimmerman for the Plaintiffs.

24 MR. FLOWERS: Pete Flowers for the Plaintiffs.

25 MS. FLEISHMAN: Wendy Fleishman for Plaintiffs.

1 MR. DeGARIS: Annesley DeGaris for the Plaintiffs.

2 MR. KENNEDY: Eric Kennedy, Plaintiffs.

3 MR. NEMO: Tony Nemo for the Plaintiffs.

4 MR. BERNHEIM: Jesse Bernheim for the Plaintiffs.

5 MR. GORDON: And Ben Gordon for the Plaintiffs.

6 MS. WOODWARD: Good morning, Your Honor. Karen
7 Woodward for Defendants.

8 MR. CAMPILLO: Ralph Campillo for Defendants.

9 MR. GRIFFIN: Tim Griffin for the Defendants.

10 THE HONORABLE JUDGE FRANK: And I am reminded by
11 Brenda that even though it may seem a bit loud in here, that
12 unless we speak fairly close to the mike, they are not like,
13 as I said before, the fancy entertainer mikes. Or if you
14 drift away, then the folks listening in can't hear.

15 Who would like to begin, going down the agenda?
16 And then the Court will kind of interject as deemed
17 appropriate?

18 MR. FLOWERS: Good morning again, Your Honor, Pete
19 Flowers.

20 THE HONORABLE JUDGE FRANK: Good morning.

21 MS. WOODWARD: Good morning, Your Honor. I can
22 provide the reports on MDL filings.

23 THE HONORABLE JUDGE FRANK: All right.

24 MS. WOODWARD: We have, as usual, attached the
25 case count to the Joint Report. I have some updated

1 numbers. They haven't risen dramatically since the report
2 was filed. Current cases in the MDL are on their way, are
3 668 cases. In New Jersey State Court, 854. Other Federal
4 Court cases, these are cases where a motion to remand is
5 either pending or a case is pending transfer to the MDL,
6 there are two of those. We have 86 State Court cases, and
7 the total number of cases is 1,610.

8 THE HONORABLE JUDGE FRANK: All right.

9 MR. FLOWERS: Her math appears right, Your Honor.

10 THE HONORABLE JUDGE FRANK: And we will talk later
11 on a couple other items on how some of these will be treated
12 under the issue -- and there may be other words to describe
13 it, coordination and other issues, because there were some
14 concerns, appropriately noted, in chambers; but, we will
15 talk about that when it is appropriate for the agenda items.
16 So, we can move on.

17 MS. WOODWARD: Your Honor, I would like to report
18 just a little bit on the other State Court litigations.

19 THE HONORABLE JUDGE FRANK: Fair enough. I would
20 like that.

21 MS. WOODWARD: Very quickly, in the New Jersey
22 litigation, the Phase II Mediation Process has begun. It
23 started last week with the mediation of one case. And that
24 case did settle.

25 All cases that have been run through the New

1 Jersey Mediation Program, Phase I and Phase II have settled
2 with the exception of one.

3 THE HONORABLE JUDGE FRANK: And maybe I could,
4 just for the benefit of the record, and maybe some of those
5 individuals that, whether they are in the courtroom or not,
6 you have referred to Phase II. Maybe you can just indicate
7 what you mean by that when you say, "Phase II."

8 MS. WOODWARD: Well, with regard to Phase II --
9 I'm not exactly sure how that program --

10 MR. CAMPILLO: I can explain that, Your Honor, if
11 I could.

12 THE HONORABLE JUDGE FRANK: All right.

13 MR. CAMPILLO: The first phase included ten cases
14 that were selected in combination between counsel for each
15 side, and some by the Court. And those were the nine that
16 have settled, nine out of ten. The tenth one is still in
17 negotiations.

18 And part of that process included a second and
19 separate phase in which I think is more than ten cases. And
20 those are the second group where the mediations were
21 scheduled to start last week, and they have begun. So, it
22 is a second session of a newly group of cases identified by
23 the parties.

24 MS. WOODWARD: With, I believe, additional law
25 firms adding their cases to the mix. Some of the firms that

1 have settled cases through that program so far, Weitz &
2 Luxenburg, Anapol Schwartz, Searcy Denney, Robins Kaplan,
3 and PritzkerOlsen.

4 THE HONORABLE JUDGE FRANK: And those, would it be
5 safe to say as we discussed -- not just -- today is not the
6 first day, but as we discussed in chambers, those are kind
7 of firm by firm with the defendant and the Court, selecting
8 the cases.

9 In other words, and then as we have also
10 discussed, and it will probably come up later this morning,
11 then those -- other than to the plaintiff and defendant, the
12 particular firm, themselves, the nature of those
13 settlements -- other than the fact of the settlement -- the
14 terms of that and who the plaintiff was remains
15 confidential?

16 MS. WOODWARD: That is correct at this time.

17 THE HONORABLE JUDGE FRANK: All right.

18 MS. WOODWARD: In Florida State Court, there are
19 two coordinated proceedings, one in Broward County and one
20 in Palm Beach County. In Broward County, there are pending
21 motions for protective order related to discovery that was
22 served in that litigation.

23 Initial CMOs have been entered and the parties are
24 meeting and conferring on possible scheduling going down the
25 line. Palm Beach County has not had its first status

1 conference yet, though I believe that that will happen
2 sometime in April. And in the lead Palm Beach County case,
3 the discovery requests have also been served. That is my
4 report of the State Court cases.

5 THE HONORABLE JUDGE FRANK: All right.

6 MR. BURNHEIM: I think that covers it, unless Your
7 Honor has any questions for me?

8 THE HONORABLE JUDGE FRANK: No, it will come up in
9 a different context, "it" meaning the state litigation. We
10 will talk about that as we go down some of the other items.
11 All right?

12 MR. BURNHEIM: All right.

13 MR. FLOWERS: Your Honor, the second thing on the
14 agenda has to do with compliance with the fact sheet
15 deadline. These were cases that were filed back in
16 December, mainly, of 2013. And there's differing numbers in
17 the agenda on what the compliance ratio is. It is growing.
18 It is getting better. We as the Plaintiffs understand the
19 need to make it even better. And we will continue to push
20 that forward.

21 MS. WOODWARD: That is right, Your Honor. I don't
22 think it is necessary to really delve in, specifically, to
23 the numbers. They are there on paper. They do grow by the
24 day.

25 The major fact sheet deadline was just last

1 Thursday. And Defendants are now faced with the huge task
2 of trying to review, process the fact sheets, compile the
3 information in such a way that it can be used for case
4 assessment purposes.

5 For that reason, and because of the enormity of
6 that task within such a short time period, the Defendants
7 have asked for a continuance of 90 days of the April 1st and
8 May 1st deadlines that were issued in the Court's recent
9 Pretrial Order No. 12.

10 THE HONORABLE JUDGE FRANK: And we will discuss,
11 before I hear from Mr. Flowers, we will discuss -- I don't
12 claim it is by agreement of the parties or the Court, but we
13 will discuss what we kind of preliminarily announced, "we"
14 meaning Judge Noel and myself, how we are going to handle
15 some of these issues. So everyone will kind of know where
16 we stand, and what orders, if any, are coming out and when
17 before we adjourn this morning. So, Mr. Flowers?

18 MR. FLOWERS: Just to address that quickly, Your
19 Honor. The April 1st deadline is the deadline that Judge
20 Noel had ordered for us to meet and confer and see if we
21 could agree upon categories of cases for bellwether trials.

22 There is no need to extend that in our humble
23 opinion. We are well aware of the categories. Everyone on
24 both sides of this litigation are well aware of the
25 categories in this case, not only from simply being involved

1 in it, but being involved in prior litigations. This is not
2 reinventing the wheel. We can easily reach categories by
3 April 1st, so that is number one.

4 In terms of the May 1st deadline, we understand
5 their need to review cases in order to adequately respond to
6 requests for bellwethers, but 90 days is totally
7 unnecessary. They have -- I mean, they have a bunch of the
8 information already in place. They have authorizations and
9 have had authorizations on many cases. If there was any
10 continuance of that date, we would respectfully suggest 30
11 days in order for them to get and review those documents.

12 I mean, we are going through the same process in
13 deciding on bellwethers. The fact of the matter is, this
14 litigation needs to continue moving along, and this is going
15 to force it to move along and everyone to commit the
16 resources they need to commit to make sure that we make
17 these selections, and frankly, keep the pressure on.

18 MS. WOODWARD: Your Honor, the identification of
19 the categories is directly correspondent to the details, the
20 medical histories of the population of Plaintiffs in this
21 litigation.

22 Until we can look at that information, understand
23 the ranges of the types of injuries that we are seeing,
24 understand where the critical mass of potential factors
25 reside, we cannot make informed decisions about bellwether

1 categories. In our view, it would be like pinning the tail
2 on the donkey.

3 Could we at a very high level broadly lay out some
4 categories? Yes. But, that is not what the bellwether
5 process is intended to advance from the perspective of the
6 goal of that program.

7 THE HONORABLE JUDGE FRANK: Well, and I won't
8 repeat in as much detail, probably not much at all what I
9 said in chambers, and I am sure it will come up again before
10 we adjourn this morning, but one of the concerns the Court
11 has is with the number of cases that have settled in New
12 Jersey. And there may have been others settled elsewhere,
13 but I am not familiar with those.

14 I am assuming that since that is firm by firm
15 settlement down there, that the parties must have some
16 relatively well informed and perhaps even strong views on
17 the general categories of cases. And they are probably not
18 too dissimilar from here.

19 So, on the one hand, the Court doesn't want to
20 rush people into this and be unfair. On the other hand,
21 whether it's -- and I will recommit to coordinating with New
22 Jersey; but, whether it is the Florida cases or elsewhere,
23 if there are decisions we need to make, because I will
24 repeat something I said in chambers, I mean, frankly
25 speaking in an MDL or non-MDL context, sometimes the

1 criticism of Federal and State Courts is, well, they rush
2 everybody into settlement. And one, there is certain
3 limited discovery that needs to be done; or two, there are
4 decisions the Court should make. Well, we need to be making
5 those decisions, because unless the rest of the world can
6 not only say that, well, I guess there is going be, either
7 by agreement, or the Judge insisting on some approach to
8 global settlement and categories of settlement, which means
9 the -- as we talked in chambers, the confidentiality issue
10 has to be changed, but yet protect the individual Plaintiffs
11 down in New Jersey, so the people can say: That looks just
12 like my case, and that seems fair to me.

13 Those issues are going to come up and they will
14 come up later here. And I won't go over, because just for
15 the rest of the folks in the courtroom who is listening, and
16 for the record there was extensive discussions about that in
17 chambers. But, I kind of got you off the mark a bit here.

18 Mr. Flowers? I think you were about to step in
19 and say something -- or maybe you weren't, in response.

20 MR. FLOWERS: The only thing I would say is their
21 argument is the same argument that could be made nine months
22 from now, two years from now. They need more information,
23 more information, more information to decide these
24 categories. We can decide these categories. It has been
25 done in three litigations in the last four years. It is not

1 complicated. It is actually in the medical literature a lot
2 of times in terms of what the injuries are going to be. So,
3 I would just rest with that. We've had a long discussion
4 previously.

5 MS. WOODWARD: Well, Defendants were not involved
6 in the other litigations that Plaintiffs have had the
7 benefit of learning from, and we are dependent on the
8 information that we get in the Plaintiffs' fact sheets. And
9 we need time to assess that information in order to make
10 proper selections of cases and determinations of categories.

11 THE HONORABLE JUDGE FRANK: And I can just
12 indicate for the record something that the lawyers who were
13 in chambers already know, and that is what Judge Noel and I
14 committed to was, we would discuss these issues and have an
15 order out early next week.

16 In other words, we don't claim there is a
17 stipulation, and I think it was suggested in some form these
18 dates would be likely. We would require that they be in
19 some significant way adhered to, but we also agree that
20 since the issues have been raised by both Plaintiff and
21 Defendant, we will chat, and early next week have an order
22 out on this issue.

23 And there may be a couple of other issues before
24 we are done this morning that should be included in that
25 same order, but I will sit tight until we hear the rest.

1 But, we did commit to that, in fairness to both parties, and
2 not just to do it, but to do it immediately. So, we can
3 then move on, unless somebody else wants to say something
4 else about -- we can move on down the agenda.

5 MS. WOODWARD: Sure. The next item, Your Honor,
6 is the issue of State Court coordination. This particular
7 issue is one that we have discussed in very general terms
8 for the past -- well, really, since the MDL first started
9 having status conferences.

10 Your Honor recognizes the importance of
11 coordinated discovery efforts, coordinated litigation
12 between the Federal and State Court venues.

13 We are now in a situation where we are faced with
14 competing discovery pressures in Florida in the MDL and in
15 New Jersey, with requests for discovery that are duplicative
16 and that could be coordinated if the parties were able to
17 actually sit down at the table with the Judges that are
18 involved in those litigations and see if we can't pave some,
19 you know, understandings that will get the Plaintiffs what
20 they need in terms of discovery to evaluate cases, and that
21 will ease the burdens on Defendant, which at this point are
22 substantial.

23 We would ask the Court for a meeting within 14
24 days because of the urgency of some of the pending discovery
25 deadlines in Florida and motion deadlines in Florida

1 involving the lead lawyers in these venues, as well as the
2 Judges. Perhaps the parties could share the costs. Perhaps
3 the meeting could be in the sunshine state of Florida. And
4 we think that this would go a long way not in just
5 coordinating discovery, but in lending itself to
6 coordination of other issues down the line.

7 Perhaps this meeting could also lead to the
8 issuance of some type of coordination order that has been
9 entered in other litigations that basically prevents people
10 from going rogue and trying to disrupt the good work that is
11 being done here in the MDL and in other places.

12 MR. FLOWERS: Your Honor, we understand the need
13 for what I would call cooperation, as opposed to straight
14 coordination. And, you know, are happy to take part in any
15 of that.

16 I would just say it is interesting, though, that
17 Stryker is here complaining about discovery in each venue,
18 when in fact they haven't answered discovery in any venue
19 yet. So, if we are going to have some sort of plan to go
20 forward, we are going to need them to actually actively take
21 a role and start answering discovery.

22 So, we are open and understand the need for this
23 and the way it helps the Court system, but things still need
24 to move along.

25 MS. WOODWARD: I'm not sure that that is a fair

1 characterization of what has been going on. As Your Honor
2 knows, the Defendants have produced core documents in the
3 litigation, documents such as the device history file, PER
4 reports, the recall file, I have an entire list I could show
5 Your Honor of documents that have been produced.

6 In addition, there is a production schedule that
7 is already in place for the rollout of custodial files and
8 for the rollout of shared drives. And the Defendants in the
9 -- or the Plaintiffs, rather, in the MDL and in Florida have
10 been provided all of that information voluntarily, and
11 formally, and will continue to be provided that information.

12 I think it is time that -- and to recognize that
13 they have benefited from advanced information in the
14 litigation. We will respond to discovery requests,
15 absolutely, but I think that getting the documents out there
16 is primary on the radar, and that is how the discovery
17 requests will be responded to, anyway, is with the
18 production of documents. So, we need to come to the table
19 on this, the three major jurisdictions where cases are
20 pending.

21 MR. FLOWERS: I will address the discovery thing
22 as we move along.

23 THE HONORABLE JUDGE FRANK: Well, one of the
24 observations I will make, and like I said in the
25 courtroom -- or in chambers, and of course giving my age, I

1 will use -- I will sound like a broken record. Young people
2 would use another phrase because they don't know what LP
3 records are, anymore. But obviously, let's be right out in
4 the open. It's no surprise, whether we look at specific
5 cases or the literature on MDLs. One of the criticisms --
6 well, I will just come in from the more positive way. If we
7 can't -- the only justification for MDLs or primary
8 justification is to assist the parties in realizing
9 economies of scale, which means saving money, time, expense.
10 And if we can't do that, there really isn't any other reason
11 to have these. And then there is the other criticism, if
12 you are in the -- with some exceptions, if you are a State
13 Judge or a State Court, because they have their
14 responsibilities. Well, the Federales come in and think
15 that they can just take over. And then the other flip side
16 of the criticism is, well, Federal Judges aren't willing to
17 coordinate and cooperate with the other districts. So, it
18 is understandably a sensitive issue. And reasonable people
19 differ on why certain things are happening.

20 But, having said that, substantially consistent
21 with what I said in chambers, Magistrate Judge Noel and I
22 will chat. What we will agree to do, because this isn't
23 reinventing the wheel, it isn't a new issue. We will
24 discuss it. And even if nothing had been said today, I have
25 already talked -- and I will be calling again the Judge in

1 New Jersey. I have talked to one of the two Judges in
2 Florida.

3 And let's be candid, one of the comments made in
4 chambers was, well, that type of talk may not be enough. We
5 will discuss -- I will probably, Judge Noel and I will
6 probably decide to have a conference call first with two or
7 three or four more Judges after I talk to Judge Martinotti
8 in New Jersey, and at a minimum include New Jersey and
9 Florida.

10 And it shouldn't come as a surprise, one, one of
11 the key things will be Judge Noel and I pushing quite
12 aggressively, but fairly about: Why aren't we moving
13 forward with some type of global, with not too many cloaks
14 of confidentiality, settlement approach? Because then maybe
15 that is one reason some of these districts would stand down
16 and say, well, if something really is happening -- or maybe
17 a judge in Florida or elsewhere will say: Well, we have got
18 our own responsibilities. But, it wouldn't be the first
19 time that Judge Noel and I, one or both of us get on a plane
20 and head for -- well, I guess people prefer to go to Florida
21 than Minnesota.

22 Although, when I have gone out to help in Arizona
23 after the Judge was killed down there, nobody wanted to go
24 in the middle of the summer, so I went down and did 70
25 sentencings a week of Immigration cases to Phoenix, and I

1 guess it is cool down there when it is only 104. But, that
2 aside, we will do what needs to be done if that means us.

3 As I said in chambers, we don't have a blank
4 check. On the other hand, the states have much more
5 restrictions, generally, with some exceptions. If that
6 means one or both of us travelling, because I will note for
7 the record it will come up in a few moments probably on the
8 whole settlement mediation issue and cooperation issue,
9 Judge Noel in the last couple of weeks has talked to the
10 lead mediator in New Jersey. And we both talked to the New
11 Jersey Judge.

12 And actually, as one or both of you will probably
13 comment, some of your respective representatives met
14 privately with Judge Noel here in Minnesota last week.

15 So, I will agree, and what I will also agree to do
16 is, separate from the order Judge Noel and I will be -- we
17 promised to get out early next week, we will get back to
18 each of you in some appropriate communication about: Well,
19 the Judge said on that date, first day of spring, that he
20 was going to arrange a conference call, at least initially,
21 because it may well be to bring all of the lawyers in, as
22 well, from these respective states. He said he was going to
23 arrange a call with the Judges. Well, did it happen? We
24 will give you an update so that everybody can know and we
25 will put something on the website, as well. So, in that

1 context, unless counsel wants to respond, we can move on to
2 the next item.

3 MS. WOODWARD: No, thank you, Your Honor. I am
4 going to turn the podium over to Mr. Griffin.

5 THE HONORABLE JUDGE FRANK: All right.

6 MR. GRIFFIN: Sure. Good morning, Your Honor.

7 THE HONORABLE JUDGE FRANK: Good morning.

8 MR. GRIFFIN: The next topic is mediation. And as
9 we discussed in chambers, the parties were directed to make
10 proposals to the Court. And we met last week, and the Court
11 issued an order that generally described that it will
12 revisit the possibility of a broader discussion at some
13 point.

14 THE HONORABLE JUDGE FRANK: Yes.

15 MR. GRIFFIN: The parties have talked. And I
16 believe it is accurate to say that we are going to try to
17 craft a process that will mediate a number of cases,
18 hopefully by the end of May, and try to take advantage of
19 some of the Stein success, frankly, in New Jersey, learn
20 from that process, try and craft a process here that is
21 reflective of some of the unique considerations we have
22 here.

23 We have a larger number of firms involved. One of
24 the solutions that we are discussing is whether we have a
25 single mediator, or one or two mediators, so there is

1 someone with a broader base of knowledge, relationships of
2 trust. So, those are the conversations that we are having
3 right now and we are hopeful to propose something to the
4 Court shortly.

5 MR. FLOWERS: Your Honor, the Plaintiffs are
6 obviously always open to any type of mediation process with
7 the goal of trying to resolve the litigation as a whole.
8 So, we have listened to and are cooperating with the
9 Defendant to try and set up some sort of system.

10 As we have indicated previously, we think that it
11 would be helpful if full disclosure was involved in this
12 system so that it would eventually turn into a bigger
13 process.

14 THE HONORABLE JUDGE FRANK: Well, and I will try
15 to be uncharacteristically succinct, here, on what came up
16 in chambers. And just for the record and for the benefit of
17 the some of the other folks listening in the courtroom;
18 obviously, that Pretrial Order No. 12, I won't repeat or
19 summarize what is in there, but I will acknowledge there are
20 different models of settlement. And without insulting the
21 experience, considerable experience of many of the lawyers
22 in the room and listening, obviously sometimes parties and
23 lawyers are willing to say things in private, which is the
24 whole purpose sometimes, even on a standalone case in
25 mediation, or they don't want to be the ones to reach out

1 and suggest: Well, can we have some technique used for
2 global -- for a global resolution, whether it is a
3 bellwether in representative categories or some other system
4 like firm by firm in New Jersey, which I will discuss in
5 more detail with the New Jersey folks.

6 They have an advantage, if they want to call it
7 that, or they have two or three or four firms that have a
8 lion's share of the cases. And we can -- we will deal with
9 counsel and the respective courts on the confidentiality
10 issue, as well, because I think Judge Noel and I feel
11 some -- and I think it is appropriate. We feel some
12 obligation to at least pursue that, being sensitive to the
13 issue that sometimes, whether it is one case, 50 cases,
14 1,000 cases, where lawyers say: Well, come on, there are
15 certain decisions or discovery we need before we launch into
16 some meaningful discussions. And it is not fair for a Court
17 to say, don't tell us your problems. We are going to order
18 mediation and worry about it later. Well, that is not the
19 attitude we are taking.

20 On the other hand, there is the opposite
21 criticism, as you well know, why didn't the parties have
22 access to the Court to discuss early settlement with or
23 without some limited discovery, or necessary discovery, or
24 decisions by the Court before all of this expense -- all of
25 the money is spent on discovery.

1 So, with all of those, with a balance of fairness
2 to both parties, I think that is the -- and of course that
3 implies some very significant communication and cooperation
4 not only between the lawyers in the MDL, but around the
5 country, without compromising their rights or their
6 respective clients' rights. So, we are not reinventing the
7 wheel, as both of you said back in chambers. So, we will,
8 with due regard to one size doesn't fit all, we have to
9 customize something to each case. We will just promise to
10 work with everyone, and I think some of this is reflective
11 on some of the decisions that are about to come from the
12 Court on the previous agenda items. So, that is what we
13 will do. And then because it is an MDL, whatever we are
14 doing we will make sure we update the website, as well,
15 apart from the e-filing.

16 And if some of that means travel, which oftentimes
17 MDLs are, usually it is the federal portion of it; but, I
18 think, Mr. Griffin you probably picked up on it, there is
19 more than one way to do this. But, you know, I don't know
20 if we have had another -- I am always in favor of letting
21 the parties have the input and agreeing on who should be
22 mediating, and as much input as possible into how that is
23 done. But, we might as well not let another session go by.
24 I think every session that we come in here I use the word --
25 I think the word is "Art Boylan" -- so I might as well use

1 it again.

2 I mean, in all seriousness, whether it is
3 coordinated through Judge Noel, because is in our District
4 usually that is the primary function of a Magistrate Judge.
5 But, we will work with you. And again, I will reach out
6 again, because I have had some more than short discussions
7 with New Jersey. And I will probably be calling him, if not
8 today -- well, I probably will make it a goal to call him.
9 We do both e-mailing and calling in the next couple of days,
10 and we even talk in the evenings sometimes.

11 But so, I know there is a concern that we don't
12 want to, whether we call it coordination, cooperation, lack
13 of communication or whatever the case may be, or maybe it is
14 none of those, it's -- well, one, the New Jersey cases are
15 at this stage, the MDLs are at this stage. There is a
16 concern that, well, there will be one system they are going,
17 one system here, and truly only the people directly involved
18 in those will benefit and nobody else will, which means
19 probably not a lot of savings of time or money for anyone.

20 I think there is, understandably, some obligation
21 on all of our parts, state and federal, to try not to let
22 that happen. So, we'll all do our best to keep
23 communicating. And maybe as Ms. Woodward suggested earlier,
24 maybe the time has not just come, but maybe it should have
25 happened sooner where we arrange a conference call, first

1 with the Judges and maybe some lawyers from around.

2 So, more than enough said by me on that topic.
3 Where does that leave us, then? We have got a few other
4 issues here, some in agreement, some not.

5 MR. FLOWERS: I think it leads us to the next
6 topic which is tolling, Your Honor. This has been on the
7 agenda for probably three months.

8 What we have been told now is that Stryker agrees
9 to toll -- to entry of a Stryker Ireland written tolling
10 agreement. I think Mr. Griffin is going to make some
11 modifications to the one that we proposed, and send it on.
12 Hopefully, we will be able to get that done quickly.

13 But, we had also asked for tolling on an entity
14 called Stryker France, and SAS. And the reason was is in
15 the documents we have seen thus far, it's clear that there
16 was significant involvement by employees of this entity.

17 The Defendants, apparently, will not agree to
18 that. And as we had talked about, potentially a stipulation
19 where they will stand by any judgment against any Stryker
20 entity.

21 We haven't gotten that stipulation, so I guess we
22 have to see it to evaluate it; but, this is a big issue for
23 us. This may end up leading to some amendment of the Master
24 Complaint. I mean, this is an entity that is significantly
25 involved in this litigation. But, I guess we will address

1 that after we see the proposed stipulation.

2 I will go on to the last part of this and then
3 leave it to Mr. Griffin.

4 THE HONORABLE JUDGE FRANK: All right.

5 MR. FLOWERS: We also propose tolling of unrevised
6 individuals. You know, under what is being reported, the
7 failure rate leading to revision of this device is upwards
8 of 50 percent.

9 So, we think that ultimately a large portion of
10 the unrevised people are going to be revised. But, because
11 of the statute of limitations issues, they are being filed
12 or need to be filed in this Court and other courts around
13 the country. So, we would ask to toll those folks so that
14 that wouldn't need to be done until they were actually
15 revised, which the Defendants will not agree to.

16 We probably will attempt to seek some sort of
17 intervention by the Court on discovery of those cases or the
18 need for Plaintiff fact sheets; But, we will address that
19 later. Frankly, we had hoped that was not going to be an
20 issue, but it is. That's it.

21 THE HONORABLE JUDGE FRANK: Mr. Griffin?

22 MR. GRIFFIN: Yes, Your Honor. I would like to
23 try and deal with the tolling agreement against Stryker
24 Ireland and Stryker France and the service issue with
25 respect to additional Defendants in the Master Pleadings

1 that were not named in the original, we'll call it, 500 or
2 so cases.

3 A sentence or two about history. As the Court
4 well knows, New Jersey was six months ahead. In New Jersey
5 only Howmedica is named. There are tolling agreements with
6 Stryker Corp., Stryker Ireland. When this issue came up
7 originally, we very much wanted to follow that model. For a
8 number of reasons, it is important to the Defendants to keep
9 things as uniform as possible so that we are taking
10 consistent positions when litigation eventually comes up in
11 Florida and other states. It is important to have a single
12 solution, because we don't want to contradict ourselves.

13 We agreed to handle things differently in the MDL
14 reluctantly, admittedly. But there was good reason for that
15 initial push to handle things in a uniform way. And what we
16 have is nuance upon nuance erupting as a result, whether
17 it's on tolling of foreign entities. We could be entering
18 into multiple tolling agreements as this litigation unfolds.
19 We do not believe any of these entities have anything to do
20 with this litigation. Plaintiffs believe differently.

21 So what we are proposing here, Your Honor, is a
22 global solution to put this issue to bed, get it off the
23 Joint Report. Let's stop talking about issues that don't
24 advance this litigation. And that is an agreement whereby
25 Stryker Corporation HOC and any insurance stand behind any

1 judgment. That will remove the tolling agreement issue,
2 that will remove the service of additional defendant issues.
3 We have proposed that now for some time.

4 The Plaintiffs have expressed concerns about:
5 Well, what if we want discovery against unnamed parties?
6 That is not an issue. The Master Complaint names every
7 entity. There has been prior depositions where Stryker
8 representatives appeared, the documents have been collected
9 from all over, including Europe. We have assured them of
10 that. So, we really believe that this is morphing into a
11 tactic to paint the Defendants in a negative light when we
12 have, without question, taken the position that Stryker, HOC
13 insurance will stand behind anything. So, I am a little
14 agitated by this topic, because I think it is being used for
15 the wrong reason.

16 So, that is where we are at. And we are hopeful
17 that we can put this issue to bed by the next conference.

18 MR. FLOWERS: Can I jump in, Your Honor?

19 THE HONORABLE JUDGE FRANK: Yes.

20 MR. FLOWERS: Because when he mentions the word
21 "agitated," he is right, I am agitated about this.

22 Number one is, what is the proposal? We don't
23 have any proposal other than, generally speaking, they are
24 going to stand by this. I don't know whether they have
25 enough money to stand by this, whether these other entities

1 have the sufficient money.

2 And the other part of it I don't understand is
3 when he talked about, at the beginning of his argument, that
4 somehow this needs to be similar to New Jersey, I have an
5 obligation and we have an obligation to sue every defendant
6 that is responsible for a client's injuries. Whether
7 somebody else doesn't decide to do that in a jurisdiction is
8 their choice; but, we have an obligation as lawyers to do
9 that. We decided to do that in this particular courthouse.

10 Then we actually proposed the identical tolling
11 agreement that New Jersey had on Stryker Ireland, which
12 Stryker has not signed. And it has been four months. I
13 mean, I am agitated about that because that is exactly what
14 they proposed and signed in New Jersey. And to suggest that
15 this is somehow different is completely wrong.

16 So, number one, sign the existing deal. Number
17 two, tell us what you are proposing, actually, in writing
18 that defines actually the parameters of it. So, I apologize
19 for raising my voice, but Mr. Griffin is right. It is an
20 agitating issue.

21 THE HONORABLE JUDGE FRANK: Well, and you can be
22 free to respond, but it seems to me we have reached a time
23 where -- and you could just by agreement or court decision,
24 say, in the next couple of weeks if you don't have an
25 agreement on some or all of these, well then tee something

1 up for me to decide at the next hearing.

2 MR. FLOWERS: We will, Your Honor.

3 THE HONORABLE JUDGE FRANK: -- the time has come
4 for that, unless one of you persuades the Court. But, it
5 doesn't sound like either one of you are headed in that
6 direction to say that it is too soon to do that, it doesn't
7 sound like either one of you are saying that. So, maybe
8 that is what you should do, whether that means exchanging
9 proposals, or whatever the case may be, or sign agreements
10 and say: Well, we now know what we can't agree on, and you
11 might not even be able to agree on -- at least we could tee
12 it up to say: Well, yeah, we can't agree on this, but we
13 think this is outside of the scope of the jurisdiction of
14 the Court, and the other side doesn't. Well, since we do
15 have a system in place where you can kind of tee something
16 up and get a decision while you are in town, so to speak, I
17 would suggest that is how we handle those, without trying to
18 oversimplify your concerns or issues.

19 And Mr. Griffin, I am quite certain you wanted to
20 respond to that and I responded first. So, go ahead if you
21 wish.

22 MR. GRIFFIN: Your Honor, very briefly. The
23 proposed tolling agreement is a piece of the puzzle. And
24 there is no question that the Plaintiffs asked us to enter
25 into an agreement to toll Stryker Ireland like was done in

1 New Jersey. But, as I mentioned, there are broader issues
2 that that is not a solution. It is a band-aid to the
3 identification of yet another related entity and tolling
4 agreement there and the administration and complication of
5 making things as uniform as possible for us. There's also,
6 obviously, the difference that Stryker Ireland was not named
7 in New Jersey. It is named in this litigation. And so
8 using the same tolling agreement doesn't work.

9 We've asked for the courtesy of a Word document so
10 that we can mark it up and that hasn't been provided. So,
11 that is a detail that typifies what is going on on this
12 issue. I think both sides genuinely are trying to do the
13 right thing, but this is a detail that can be cured by
14 essentially putting all of the assets of the parent and the
15 insurance behind any outcome. That cures everything.

16 THE HONORABLE JUDGE FRANK: Now, Mr. Flowers
17 didn't leap over the podium, but he kept a poker face, or
18 tried to. So, go ahead.

19 MR. KENNEDY: I was sitting behind him when I
20 could see that.

21 MR. FLOWERS: You know what, Your Honor? I am not
22 even going to respond to that. I mean, if they would like a
23 Word version of the exact document that they used, that they
24 created in New Jersey, we'll provide that Word version,
25 although they could go to an actual lawyer that was from New

1 Jersey from their own side and obtain that. But, having
2 said that, I think the issue is fleshed out.

3 THE HONORABLE JUDGE FRANK: Well, we can get on
4 with it and you can tee something up at the next hearing,
5 because separate from this case, or what either one of you
6 have said, we have, for example -- and many of the
7 experienced lawyers in this room are fully aware of this.

8 Regardless of what the issues are, it is not
9 uncommon to have a parent company, you know, depending on
10 sometimes the language in terms of being responsible for
11 whatever the judgments are, then granted there are sometimes
12 issues and sometimes it is worked out by stipulation. Well,
13 will it have an impact on discovery, for example? And then
14 you raised a separate issue of, well, do they have enough?
15 But, we will either get it worked out -- as to some of your
16 co-counsel, Mr. Flowers, they were standing behind you and
17 didn't see the expressions on your face, it reminds me if we
18 can just take a moment of diversion here of some years back,
19 a criminal defendant -- not trying to draw an analogy. I
20 sentenced a chiropractor to a significant time in prison for
21 insurance fraud of a few million dollars. And I was in the
22 skyway the day after the sentencing and a lawyer who wasn't
23 involved in the case said to me: Do you always allow those
24 things to happen in your courtroom?

25 And I said: I'm not sure what you mean.

1 Well he said: You haven't read the Minneapolis
2 Tribune and Pioneer Press this morning about that sentencing
3 yesterday?

4 No.

5 Well he said: I'm not going to ruin it for you.
6 You go back and read the articles. Read the Pioneer Press
7 first, because the reporter had a sense of humor. And he
8 was standing right where the two of you were standing with
9 his lawyer.

10 So, I came back and there was the article.

11 As the Judge imposed the six-year prison sentence,
12 Dr. So and So's pants dropped to the floor below, and
13 everybody in the courtroom was smiling and smirking, except
14 the Judge remained stone-faced and finished the sentence.

15 I didn't see it. They didn't see it. And so --
16 and you know, he had lost a lot of weight and been through
17 it. And so the next day I saw the reporter in the skyway
18 and I said -- and this was a few years ago before some of
19 the other movies had come out that Clint Eastwood had either
20 been in or produced -- and I said: Without suggesting I am
21 a card-carrying fan of Clint Eastwood, I said: Did you see
22 it?

23 Yes.

24 I said: Was it the good, the bad or the ugly?

25 Oh, man, Judge, it was the ugly.

1 MR. FLOWERS: I can assure you, it didn't happen
2 in this case, Judge.

3 THE HONORABLE JUDGE FRANK: So, that did not -- I
4 don't think it happened.

5 But, so, I suppose if the lawyers on both sides
6 are suggesting we should have a camera or something so you
7 can see the expressions of the lawyers, because we do
8 actually have that ability, because there are four cameras
9 in here that activate the screen. There is one there, one
10 there -- actually three, because the one above the exit sign
11 is the Marshal's for downstairs. But, we probably won't do
12 that. So, sorry for the diversion.

13 And by saying what I did: One, I am not making
14 light of it; and two, I am not suggesting that either one of
15 you did anything inappropriate, because you were both very
16 civil as you announced your respective agitations.

17 MR. FLOWERS: Thank you, Your Honor.

18 MR. GRIFFIN: I appreciate that, Your Honor.

19 There was one other tolling issue unrelated --

20 THE HONORABLE JUDGE FRANK: All right.

21 MR. GRIFFIN: I just wanted to quickly address
22 that. And that is the unrevised patient claims. And, you
23 know, the Defendants' position is there is no claim absent
24 injury.

25 And if the Plaintiffs have been injured, they

1 should file suit -- or they may file suit, is a better way
2 to say it. We are interested to know who has a claim. And
3 we want those fact sheets. We want those disclosures so
4 that we can make informed judgments. So, we are not -- a
5 tolling agreement of unrevised claims does not appeal to the
6 Defendants.

7 MR. FLOWERS: And they were going to get
8 information based on our tolling agreement about these
9 Defendants -- or of these Plaintiffs. But, if they don't
10 want to do it that way, they don't want to do it that way.

11 THE HONORABLE JUDGE FRANK: Well, and as both of
12 you know and many people in the room know, these tolling
13 agreements are handled, one size doesn't fit all, and
14 sometimes they are broad in scope, sometimes not. But, to
15 the extent the Court has jurisdiction over some or all of
16 these issues, I would just suggest we get them all out in
17 the open. And what you can't agree to, we will tee it up
18 for the next time we are together on May 1st. So, where
19 does that leave us for --

20 MS. ZIMMERMAN: Your Honor, we are going to just,
21 I guess, dovetail on something that Mr. Griffin led into,
22 and that is the service of entities named in the Master
23 Complaint that were filed prior to the entry of Pretrial
24 Order No. 10. So, backing up a little bit, Pretrial Order
25 No. 7 detailed an e-mail service program that was presented

1 to the Court by both Plaintiffs and Defendants, allowing
2 folks that file cases to serve their summons to designated
3 e-mail addresses. And that has been working relatively
4 smoothly.

5 Then moving forward to the end of January when we
6 had permission from the Court to adopt the master long-form
7 and short-form complaint, we named at that point four
8 different Stryker entities.

9 We have been presented with a great number of
10 questions over the past sixty days or so by attorneys on
11 file with cases that were filed prior to the adoption of the
12 master long form. The vast majority, in fact, all but about
13 20 of those cases named one or two of the four Defendants
14 that were ultimately named in the master long form. So, the
15 question that is posed to us on a regular basis is, are
16 these attorneys required to go back, request an additional
17 summons be issued so that they can then serve the additional
18 Defendants that are now deemed part of their lawsuit based
19 on the entry of Pretrial Order No. 10?

20 It was our hope and suggestion to Defendants that
21 we could come up with another agreement as to how these
22 previously-filed cases where they -- perhaps they only named
23 Howmedica and they served Howmedica. And the question posed
24 then is, now that we have a master, do they need to go back
25 and serve Stryker Sales, Stryker Corporation, and Stryker

1 Ireland? And we were hopeful that we could come up with
2 something akin to the e-mail service program, or even better
3 perhaps a waiver of service for those cases that were on
4 file prior to the adoption of the master.

5 It is the Plaintiffs' position that the Defendants
6 have the obligation under Rule 4 to waive service and the
7 costs associated with that. It seems it is just an
8 administrative, frankly, nightmare, to go through these 500
9 cases to re-serve on new Defendants something that has
10 already really been served and that Defendants are certainly
11 aware of.

12 So, we had been hoping to work something out, but
13 we are certainly prepared to file a motion seeking relief
14 for these cases that were on file prior to Pretrial Order
15 No. 10.

16 THE HONORABLE JUDGE FRANK: Mr. Griffin?

17 MR. GRIFFIN: It is like water torture. Service
18 issues keep coming and we are trying to find a solution that
19 will be consistent with how this has been handled in New
20 Jersey, that will be consistent with how issues will be
21 handled elsewhere. And what we said earlier about a global
22 solution will obviate the need for this service issue.

23 Until that is addressed, the solution is pretty
24 straightforward, e-mail a summons to the e-mail service
25 address that was set up in the earlier PTO. This is a

1 really small issue. There would be 500, as I understand the
2 Plaintiffs' numbers, 500 summons to the designated e-mail
3 box which would essentially mark the starting of the action
4 with respect to the new defendant in those prior actions.

5 We are hopeful that we can craft a global solution
6 that will address this. If we can't, I would certainly go
7 back to my client and recommend that we obviate this service
8 issue. But, let's focus our energies on a solution that
9 will address all of these issues across all jurisdictions,
10 that is where we are coming from.

11 THE HONORABLE JUDGE FRANK: My suggestion is that
12 it will either be worked out or not, but tee it up and if it
13 is not resolved by agreement, it will be resolved by Court
14 decision on May 1st.

15 MS. ZIMMERMAN: We will do that immediately.

16 THE HONORABLE JUDGE FRANK: That is my suggestion.
17 Unless one of you, but it doesn't sound like there is a
18 disagreement on that, it doesn't sound like either party is
19 going to say: Well, that is too soon to resolve it. I
20 don't think we are going to hear that from anyone. So, all
21 right?

22 MR. FLOWERS: Your Honor, the next topic is the
23 fun topic of discovery.

24 The Defendant has recently produced a couple of
25 custodial files and a couple of shared drives. It is our

1 position that their production at this stage is way too
2 slow. We do have a motion that we are filing today to
3 compel that sets forth essentially several areas of issue.

4 Very briefly, one is they have 26 custodians that
5 they have, themselves, have identified as materially
6 relevant. We are asking that all documents that they have
7 reviewed thus far and are non-privileged be produced
8 immediately.

9 Their earlier production of documents that Ms.
10 Woodward referred to before contained essentially no
11 metadata. And we are asking for a reproduction of those
12 documents with the actual metadata so the documents are
13 useful to us.

14 There is one more issue dealing with the
15 production of documents that are in French that will be in
16 the motion; but, as you suggested twice before, tee it up
17 and we will deal with it.

18 THE HONORABLE JUDGE FRANK: Well, excuse me, and
19 you had -- excuse me again. You had mentioned in chambers
20 that this issue had come up in some context with Judge Noel
21 last week, and that either at his suggestion -- perhaps it
22 was -- well, if there isn't a resolution, just file a
23 motion.

24 And I think Ms. Woodward had said in chambers
25 that, well, there really hasn't been any meet and confer on

1 this issue if the motion is going to be filed. So, if you
2 care to respond, Ms. Woodward, that is fine. But that is
3 probably what we will end up doing. For lack of a legal
4 word, we will probably end up teeing it up in some
5 appropriate way. And -- well, I will hear from Ms. Woodward
6 first.

7 MS. WOODWARD: Yes, Your Honor. While tolling is
8 the source of Mr. Griffin's agitation, discovery is the
9 source of mine. Defendants have been frustrated with the
10 lack of coordination and perceived cooperation on the
11 discovery front. It is our view that the PLCC is way ahead
12 on the discovery front than where they would be had the New
13 Jersey litigation not come before them, and had they not had
14 the benefit of rolling document productions from that
15 litigation.

16 We started producing documents to them before they
17 ever even served discovery requests. Their requests, by the
18 way, were served in late January for the first time.

19 And here we are in March, two months later, facing
20 a discovery motion. So, that has been a source of
21 frustration with us. The core documents that we produced
22 voluntarily were ones that were assembled out of a meet and
23 confer -- they came out of a meet and confer process with
24 the New Jersey Plaintiffs to get to the heart of the matter,
25 to compile the documents that are the essential documents in

1 any medical device litigation. This is what you need to
2 really get to an understanding of the case.

3 So, there were 14 categories of core documents
4 that have been produced. The Plaintiffs have raised
5 concerns with us that there is no metadata associated with
6 those documents. Those documents were produced according to
7 the New Jersey Format of Production Order. Those documents
8 came from -- they were hard copy files maintained in the
9 regular course of business. They have no metadata. The
10 official files have no metadata. And why we are fighting
11 about metadata, I think, is a diversion from actually trying
12 to understand this litigation.

13 We have also, as a part of the meet and confer
14 process in New Jersey identified certain witnesses who we
15 feel were the most meaningfully involved in the litigation.
16 26 were identified. That was done at the request of the New
17 Jersey Plaintiffs. We did that voluntarily. Reasonable
18 minds can disagree on the list. And then we started to put
19 into place a rolling production of their documents.

20 We have already produced to the Plaintiffs in the
21 MDL three custodial files and the clinical shared file where
22 some pieces of the documents that were in the core set, they
23 will likely find electronic copies of some pieces of those
24 documents that will have associated metadata.

25 And then we have a schedule for production of

1 custodial files and additional shared drives, including the
2 marketing shared drive and the testing shared drive through
3 the month of May. We are at this time even looking at our
4 resources and where we are in the review process and
5 preparing to rollout additional documents from those files.

6 Now, as that is going on, the Plaintiffs in the
7 MDL have engaged us about files they are interested in
8 getting sooner, rather than later, about documents they are
9 interested in getting sooner, rather than later.

10 We said: Great, we will go look at where we are
11 with those documents, the collection process, the review
12 process, we can get those to you, work them in. We will and
13 we are.

14 And one of our concerns is that the PLCC is
15 seeking this discovery motion not really to resolve issues
16 that need to be resolved, but rather to seek a strategic
17 advantage in the litigation in competition with the New
18 Jersey Plaintiffs. The New Jersey Plaintiffs haven't
19 complained about metadata, they haven't filed any type of
20 discovery motions. Things are moving smoothly. They meet
21 and confer on a regular basis, and that is the way the
22 process should work, and the way the process we feel can
23 work if the meet and confer process in the MDL is given a
24 chance, and if we are able to get everyone to the table at a
25 coordination meeting on discovery, everybody from Florida,

1 New Jersey in the MDL, we can obviate the need for motion
2 battles on discovery down the line.

3 And to the extent there are any motion battles,
4 they should be coordinated. There shouldn't be separate
5 battles on general documents in separate jurisdictions. So,
6 that is our position on the motion and we will be prepared
7 to respond to it as soon as it is filed.

8 MR. FLOWERS: Briefly, Your Honor. I think they
9 would like to obviate the need for discovery in this case.
10 There is 26 custodians that they told us before that they
11 had collected their files, they were 75 or 80 percent
12 complete on review of those documents. There is no reason
13 those should not be turned over.

14 The fact of the matter is, we want to move the
15 litigation forward. The documents they produced thus far
16 has been the absolute smallest tip of an iceberg. These
17 cases involve 20 million pages of documents a lot of times.
18 We have narrowed down our focus, that is why I provided Ms.
19 Woodward some names that we would like, but there is no
20 reason why we shouldn't get what they have collected thus
21 far and start, so that we can focus and make this like a
22 funnel where we actually are able to quickly get to the core
23 issues.

24 I am glad that she believes that the way a
25 Plaintiff litigates a case is by obtaining the eight files

1 that they sent. But, that may not be the way that I believe
2 to litigate a case.

3 Number two is metadata. I think I heard that
4 metadata wasn't that important. You must be kidding me. It
5 is the key to all of these cases, because it helps us
6 identify who at Stryker knew what and knew when and how they
7 responded.

8 So, that is why these documents, these initial
9 documents and the metadata associated with them are
10 important. But, all of this will be laid out nicely,
11 simply, in our motion, and we will be prepared to argue it.

12 THE HONORABLE JUDGE FRANK: Not to pour lighter
13 fluid or gas on the fire, but you did hear Ms. Woodward say
14 that one of their concerns is trying to get a strategic
15 advantage over, whether it is New Jersey or Florida or both.

16 MR. FLOWERS: Correct. That is not the case, Your
17 Honor. For whatever reason, New Jersey has not gone forward
18 with the deposition process. New Jersey has not pushed
19 forward on documents that don't have metadata. I don't know
20 why that is. But, the fact of the matter is, this is the
21 simple core discovery we also had served interrogatories on
22 them. They asked us, Stryker asked us to serve
23 interrogatories and the requests and not be duplicative.

24 So, we served the New Jersey -- what New Jersey
25 had, and then we added on things that were not. What we

1 have asked them is, if you don't want to answer the New
2 Jersey interrogatories for whatever reason, or whatever
3 deals you struck, please just answer ours. So, take away
4 the 91 requests to produce or number of interrogatories, I
5 don't remember the numbers, but we are trying to focus what
6 we are doing.

7 It has nothing to do with the strategic advantage,
8 it has everything to do with getting the discovery going.
9 Because if we are talking about mediating these cases, we
10 are mediating these cases somewhat in the dark right now.

11 We don't know the full liability story. We don't
12 know of somebody who was, for instance, implanted six months
13 before this device was recalled, what that means to the
14 value of his potential case. Because we don't know what
15 Stryker knew at that time. That makes a huge difference in
16 valuing these cases. So, all we are trying to do is get to
17 the simple discovery.

18 At their current pace, you know, we are not going
19 to see 26 custodians for potentially two years. They say
20 they are going to turn these over. They always -- the same
21 argument they've made on each one of these things, we want
22 to do this, we are going to do this, let's meet and confer.

23 Let's get some specific things in order. We are
24 going to do the following by X date with these names. That
25 is all we are asking for. What we do in every other

1 litigation is actually have a schedule that is a reasonable
2 schedule that identifies people -- not a schedule they
3 select, but one we are a part of. Right now everything they
4 have rolled out is what they have selected, not that we have
5 selected.

6 MS. WOODWARD: Well, just to respond briefly --

7 THE HONORABLE JUDGE FRANK: All right.

8 MS. WOODWARD: -- because we could argue about
9 discovery all day. We have not unilaterally selected what
10 is going to be rolled out. That has been the subject of a
11 meet and confer in New Jersey and has been put into actual
12 court orders.

13 I think what the examples that Mr. Flowers has
14 raised point to is the desperate need for a meeting between
15 all jurisdictions to coordinate discovery. If we were
16 trying to obstruct or delay that process, we would not have
17 asked for a meeting within the next two weeks to get a plan
18 put into place. And that is all I have, Your Honor.

19 THE HONORABLE JUDGE FRANK: Mr. Flowers?

20 MR. GORDON: Your Honor, may I make one point on
21 this?

22 THE HONORABLE JUDGE FRANK: Mr. Gordon? Sure.

23 MR. GORDON: Do you want me to come up or do it
24 from here?

25 THE HONORABLE JUDGE FRANK: Unless Mr. Flowers

1 objects to that, but I don't see him --

2 MR. FLOWERS: I don't object to Mr. Gordon.

3 THE HONORABLE JUDGE FRANK: Or Ms. Woodward?

4 MR. GORDON: I will be very brief.

5 MS. WOODWARD: I object strongly.

6 THE HONORABLE JUDGE FRANK: I will note the
7 objection.

8 MS. WOODWARD: Okay.

9 MR. GORDON: So, Your Honor, this will be in the
10 brief as, you know, the motion we are filing, as Pete
11 indicated. But, there are a number of issues in there that
12 are important, but to put one of them in perspective, it
13 relates back to Stryker France. And -- are you going to
14 interrupt me? Go ahead.

15 MS. WOODWARD: Well, I am going to object to the
16 extent we are launching into the specifics of what is going
17 to be in the discovery motion because then I feel like I
18 have to address them. Now is not the place to do that.

19 MR. GORDON: I think it is important, Your Honor.

20 THE HONORABLE JUDGE FRANK: One at a time.

21 MS. WOODWARD: We've laid out the fact that the
22 discovery motion will be filed, and we can deal with the
23 motion when we see it, have our response then. I don't
24 think there is more that should be said that is appropriate
25 for this particular status conference.

1 THE HONORABLE JUDGE FRANK: I will hear briefly
2 from Mr. Gordon and then I will hear any response by --

3 MR. GORDON: I will try not to interrupt.

4 THE HONORABLE JUDGE FRANK: -- Ms. Woodward, and
5 then we will move on.

6 MR. GORDON: Your Honor, just -- there are many
7 things in the motion. One thing I want to preview relates
8 back to the earlier point about Stryker France's being --

9 THE REPORTER: Could you slow down, please?

10 MR. GORDON: Yes, I'm sorry -- a possible entity
11 in this case. There are two devices at issue in this case,
12 the Stryker Rejuvenate stem as you know, and the ABG II
13 stem. ABG stands for Anatomic Benoist Girard, B-e-n-o-i-s-t
14 G-i-r-a-r-d.

15 THE HONORABLE JUDGE FRANK: Thank you.

16 MR. GORDON: The Benoist Girard is a device -- or
17 it is a company in France, a town call Caen, C-a-e-n, not
18 Cannes, France on the Riviera, but north of there. That is
19 a manufacturing site for Stryker.

20 In 2010, that entity was sold to another entity by
21 Stryker. That entity was -- and employees of that entity,
22 we know from some of the documents produced so far, was
23 intricately involved in some of the processes -- we don't
24 know how fully -- in the production, the manufacture, the
25 design, the rationale for the original stem, two-piece stem

1 called the ABG, the Anatomic Benoist Girard stem that
2 predated the manufacture of the Rejuvenate.

3 We have a document that Karen produced recently
4 from 2005 where the French, where employees in the French
5 entity are talking about the rationale for the ABG II
6 modular stem, as opposed to the monolithic stem. This is a
7 long way of saying that it is possible, we don't know yet
8 without getting this critical discovery from France in these
9 French documents, French language documents, that there are
10 entities, Stryker France or related entities, that are
11 independently liable in this case.

12 And Judge, if you will think back, some people in
13 here are old enough to remember the *Breast Implant*
14 Litigation. I think Ralph Campillo was involved. We had
15 several manufacturers in that case that were successor
16 entities to manufacturers that preceded them. For example,
17 American Heyer-Schulte, Hospital Supply Corporation and
18 Heyer-Schulte Corporation were later bought by Baxter
19 Healthcare Corporation, which is the entity that was
20 defending the case at trial. That entity, and the same
21 thing with Bristol-Myers Squibb, another breast implant
22 manufacturer had a subsidiary named Medical Engineering
23 Corporation. The parent companies in those cases argued
24 that those earlier companies were not involved, because --
25 or were not required to be in the cases because they were

1 going to stand good for any judgments in the case.

2 And when we got to trial and I tried, co-tried a
3 *Heyer-Schulte/Baxter* case, and the *Medical*
4 *Engineering/Bristol-Myers* case, those lawyers for the parent
5 companies, akin to Howmedica and Stryker here said to the
6 jury, they made the argument that if you find us liable in
7 this case, bear in mind the chronology of events and the
8 sequence of events. And bear in mind what happened and when
9 it happened. And many of the things that happened did not
10 happen on our watch. They happened on the watch of these
11 prior entities, these entities that are not involved in this
12 lawsuit. So, that was a real problem for us in that case.
13 So, that is why here, at least one reason, that we need to
14 be able to get all of the French documents, and again, this
15 is part of our motion to compel, they have told us that it
16 is a very small segment of the overall production. If we
17 can't get the French language documents promptly, which I
18 think are at the core of the predecessor model to the
19 Stryker Rejuvenate, the ABG II, then we are going to be
20 extremely limited on our ability to understand the original
21 design rationale for going to a modular stem when their
22 monolithic one-piece stem had very good clinical results.

23 And if we are talking about -- I think Ms.
24 Woodward estimated about 5 gigabytes of data for the French
25 language documents, we should be able to get those

1 immediately because they may be the key to this case.

2 And as Your Honors probably know, to get these
3 documents translated by an accredited company with a really
4 good native French language speaker and technical expertise
5 on these issues is not easy and it's not fast. And they
6 have told me, I have talked to them personally, that if we
7 have to give them to them piecemeal over a period of time,
8 then the people that we hire to do it might not be
9 available --

10 MS. WOODWARD: Your Honor, I am sorry to
11 interrupt, but Mr. Gordon is arguing his motion and this is
12 not appropriate at the status conference.

13 THE HONORABLE JUDGE FRANK: Anyway, that is where
14 we are headed, Mr. Gordon?

15 MR. GORDON: Yes, sir. First let me finish, I
16 just wanted to say that we have to get the French language
17 documents, among others, very quickly, or we will not be
18 able to do the liability analysis on this case, and we have
19 to hire these translators to do it, so they need the
20 documents up front or we won't have a continuity of
21 translation services.

22 THE HONORABLE JUDGE FRANK: Do you want to give me
23 a preview, Ms. Woodward?

24 MS. WOODWARD: Briefly. The PLCC somehow believes
25 that we have all of the French language documents segregated

1 into a file that we can just hand over to them in this
2 litigation. That is not the case.

3 If there is a sliver of information that they need
4 related to this particular French entity that they want to
5 focus in on, speak to me about the specifics of what you
6 need. And don't tell me you need the universe of French
7 documents. We are happy to work with them on issues like
8 this on an ongoing basis.

9 THE HONORABLE JUDGE FRANK: I guess we will take
10 this up on May 1st.

11 MR. GORDON: Yes, sir --

12 THE HONORABLE JUDGE FRANK: Well, I misspoke. The
13 motion is going to be filed, and either you will agree on a
14 briefing schedule or you won't. Because one issue I would
15 indicate, and not unique to this case, is that, obviously,
16 we will reserve the right to either have oral argument or
17 rule on the papers when they come in.

18 MR. GORDON: Yeah, I do think, Your Honor, that
19 time is of the essence on this part of the case, because we
20 do need to hire the French translation company.

21 THE HONORABLE JUDGE FRANK: I will assume, not
22 unique to this case, that there will either be an agreement
23 once you file your motion on a briefing schedule, or there
24 won't be. And I assume we will find out if there isn't if
25 one of you rings us up.

1 MR. GORDON: Thank you, Your Honor.

2 MS. WOODWARD: Thank you, Your Honor.

3 MR. CAMPILLO: Your Honor, could I make one very
4 brief final comment which I think is very telling?

5 THE HONORABLE JUDGE FRANK: Sure.

6 MR. CAMPILLO: Here we are, this much time into
7 this litigation (busy signal sound over the sound system)
8 and there is an obvious disconnect between what the group of
9 lawyers in New Jersey seem to need for evaluating cases and
10 moving forward, and what this group wants. And -- sorry
11 about that.

12 THE HONORABLE JUDGE FRANK: Well, let me just get
13 a Sametime message to Brenda.

14 MR. FLOWERS: I think everyone hung up on Mr.
15 Campillo.

16 MR. CAMPILLO: Understandably so.

17 MR. DeGARIS: That was the New Jersey lawyers,
18 Your Honor. They just hung up. (Busy signal tone ended.)

19 THE HONORABLE JUDGE FRANK: Once they heard the
20 word "New Jersey lawyers," it stopped.

21 MR. CAMPILLO: The point is there is a huge
22 disconnect between what the two groups want. And one group
23 seems to be doing very well, moving forward, resolving
24 cases. And by the way, I understand there is one more of
25 those mediations ongoing today.

1 And there has not been one report from the group
2 of lawyers of the PLCC here in the MDL indicating they have
3 had any discussion with the New Jersey lawyers about
4 respective needs for discovery. I find that very odd. And
5 if they haven't had those discussions, well they should have
6 a long time ago. And if they have, they should be reporting
7 to this Court as to what the disconnect is all about. I
8 just think that it is an important thing to recognize as we
9 move forward.

10 THE HONORABLE JUDGE FRANK: Would you like to
11 comment on that, Mr. Flowers?

12 MR. FLOWERS: I would say we don't know exactly
13 what New Jersey is requesting, but nothing has been rolled
14 out for three months, essentially. So, I am presuming that
15 they haven't requested additional documents. We've decided
16 we need to do a parallel path along with mediation. I don't
17 know. We will certainly reach out to them and speak with
18 them about it; but, it seems to be too -- it doesn't seem
19 like anything is going on in the discovery in New Jersey.

20 THE HONORABLE JUDGE FRANK: If I may, and this
21 came up back in chambers, but really kind of separate from a
22 motion being filed or not being filed. How would you
23 describe the level of interaction or communication -- I
24 don't think it is an unfair question -- between the
25 Plaintiffs' lawyers here and the New Jersey group.

1 MR. FLOWERS: The level of communication is good,
2 Your Honor. They are all lawyers both here and there that
3 have worked together in many litigations.

4 THE HONORABLE JUDGE FRANK: Obviously, there is an
5 implication that that is not the case.

6 MR. CAMPILLO: Mr. Flowers just responded to the
7 Court that they will, will ascertain why there are
8 differences. Why hasn't that happened in the last year? Or
9 at least since we have been here in the MDL, which is now
10 coming up on eight or nine months? That is my point, that
11 they haven't had those discussions. And there may not be a
12 lot of differences. And I think the whole spirit of
13 cooperation, communication and coordination, compels the
14 leadership lawyers in this MDL to be communicating on
15 specific topics like that with their counterparts in other
16 jurisdictions.

17 THE HONORABLE JUDGE FRANK: Before I hear any
18 response, I will just read a Sametime message, that is the
19 code for text messaging in the Federal Court, from someone
20 in chambers.

21 "One of the attorneys in your courtroom left a bag
22 and coat on the bench outside the courtroom unattended. The
23 Court security officers have the items in the Marshal's
24 Office on sixth floor for pickup following the hearing. So,
25 I don't know who that might be, but -- so, there you have

1 it.

2 MR. FLOWERS: Your Honor, just to make a comment
3 about that. So, we have done essentially the same, a lot of
4 the same in terms of custodians that New Jersey did. The
5 Defendant identified these 26 materially-relevant people
6 back a year ago, started collecting their documents probably
7 two years ago. This is the same discovery. It just happens
8 to be that we have tried to select, potentially, some
9 different people on that list of 26 than New Jersey did.

10 And I will tell you, the people that we selected
11 are on the top of the food chain to the major categories of
12 this case, the design of this device, the marketing of this
13 device, and other portions of this device.

14 The reason we did that is because we want to get
15 to the end of this case earlier than starting at the bottom
16 and moving your way up. But, this group is all on the 26th
17 that they have identified in New Jersey. So, there is a
18 coordinated, cooperated type of path towards discovery.

19 The problem is, though, is they haven't answered
20 any discovery in New Jersey, other than rolling out some
21 documents that they want. They haven't formally answered
22 discovery. That is all we are really asking for is some
23 formal answers. The interrogatories that we drafted are
24 really specific things to try and get to the end game
25 sooner.

1 MR. CAMPILLO: Your Honor -- I'm sorry.

2 MR. FLOWERS: So, we are asking that they just
3 actually comply with what the rules are in every
4 jurisdiction. If they cut some other deal in New Jersey
5 that they are not going to comply with those, well then that
6 is that. But, it shouldn't hold up the actual discovery in
7 this case in the Federal MDL.

8 MR. CAMPILLO: Your Honor, there are some
9 inaccuracies being stated right now. For example, the 26
10 witnesses or custodians who were identified in 2014 -- late
11 December 2013, and it was done at the request of the New
12 Jersey leadership group. They did not want to review all of
13 the organizational charts and ask the Defendant: Would you
14 identify those that are reflected on the charts that you
15 feel are meaningfully involved? And we said, that a "no
16 win" situation because you are going to criticize whatever
17 judgments we make, ultimately; but nevertheless, we agreed
18 to do that. And that was done. So that was done a couple
19 of months ago and the rollout commenced immediately
20 thereafter. This is not something that has been in the
21 works for two years like Mr. Flowers just stated to the
22 Court.

23 But, this is why Karen objected to the discussion,
24 because these are the kinds of things that will be easy to
25 address in the motion. And I don't think -- I agree with

1 her we are taking up the Court's time and all of the
2 lawyers' time for something that has a proper venue already
3 and that is where we should have this battle.

4 THE HONORABLE JUDGE FRANK: Well, we'll take it up
5 and there will be the issue not just of discovery that we
6 will pursue, because it was raised in chambers, it is in the
7 air here about whether we use the words communication with
8 respective counsel. And we will just focus on New Jersey
9 for the time being on Plaintiffs and Defendant's side. Or,
10 people want to use the word cooperation or coordination, we
11 will take all of those issues up.

12 And then with respect to this particular motion,
13 with or without the Court's decision, if there is no
14 agreement on a briefing schedule, we will either decide it
15 on the papers, with or without a request for oral argument,
16 or ring the lawyers up with due regard to proceeding in a
17 fair but expeditious manner. So, where does that leave us
18 then at that time, Mr. Flowers?

19 MR. FLOWERS: That leaves us to G on our agenda,
20 which I believe is the amended PTO No. 4.

21 Mr. Nemo, at the request of Brenda, drafted an
22 order that requires, or removes the requirement that
23 Plaintiffs' lawyers list both the Federal Court --

24 THE HONORABLE JUDGE FRANK: Can you hold on one
25 moment?

1 (Discussion off the record.)

2 THE HONORABLE JUDGE FRANK: She is going to take
3 one minute. The phone call, for lack of a better word, is
4 disconnected. She didn't disconnect it as far as we know,
5 but she has to make one call here.

6 (Discussion off the record.)

7 THE HONORABLE JUDGE FRANK: Where were we,
8 Counsel?

9 MR. FLOWERS: Your Honor, we were on the Amended
10 PTO No. 4.

11 THE HONORABLE JUDGE FRANK: All right.

12 MR. FLOWERS: This is an order that was suggested
13 to us. Mr. Nemo drafted it, an order. It removes the
14 requirement that a Plaintiff lawyer file both a list of
15 Federal Court admissions and an attorney certification with
16 each direct filed complaint. It is agreed to. We just need
17 to submit the order.

18 THE HONORABLE JUDGE FRANK: All right, that is
19 fine.

20 MR. FLOWERS: So, we are to the agreed to part,
21 Your Honor.

22 MS. WOODWARD: Finished with it.

23 MR. FLOWERS: The next part is just the retention
24 of physicians as experts by the Defendant. This is one we
25 don't agree to --

1 THE HONORABLE JUDGE FRANK: Right.

2 MR. FLOWERS: But, we had agreed to tee that up.
3 There's going to be briefs filed tomorrow by both sides, and
4 then responsive briefs filed on the 28th.

5 THE HONORABLE JUDGE FRANK: And in fairness to
6 both of you, you had announced that, I think, the last time
7 we got together. So, yes.

8 MR. FLOWERS: And I believe --

9 MS. WOODWARD: I'm not sure what more there is to
10 say on the last item, on the agenda scheduling, Your Honor.
11 We have requested a 90-day continuance.

12 THE HONORABLE JUDGE FRANK: Right, and we
13 promised, "we" meaning Judge Noel and I have discussed it
14 and then get an order out early next week at the latest.

15 MS. WOODWARD: Plaintiffs oppose that request.
16 And I think that is all there is to say.

17 THE HONORABLE JUDGE FRANK: Right.

18 MR. FLOWERS: Correct.

19 THE HONORABLE JUDGE FRANK: I think you have made
20 your positions clear. Let me just say, then, that the next
21 get together, because the timing si a little bit different.
22 Let's hope -- we will make sure we are all on the same
23 page -- is May 1st. And we didn't pick it because it was
24 May Basket Day but you can bring -- and some people don't
25 know what May Basket Day is depending on your backgrounds.

1 And then the differences hopefully won't interfere with
2 everyone's plans. We are getting together in chambers at
3 1:15, do I have that right?

4 THE CLERK: 1:15 in chambers, 2:00 in the
5 courtroom.

6 THE HONORABLE JUDGE FRANK: And 2:00 here. And
7 then whether or not we go the entire afternoon and we set
8 motions on -- and just so everybody is aware, unfortunately
9 that is my schedule, because that is the Wells Fargo trial.
10 It is the second Wells Fargo trial. It's 6 or 7 weeks. And
11 because of some other interruptions I just couldn't shut
12 down for the whole day, so we are going to go through noon
13 on that day.

14 And in the highly, highly unlikely event that
15 something changes, and I don't believe that will be the case
16 so that we would have the option to move it up. We would
17 never do that unless everybody agreed, which they probably
18 wouldn't, because they would say: Well, look it, we planned
19 on 1:15 on that date and you gave us the whole afternoon.

20 And then what we will do once any motions come in
21 with the issue of deciding on the papers or oral argument,
22 we will also put that up on the website so people say --
23 well, how do we know as part of the conference we are going
24 to have oral argument on that? We will put it right up
25 there. And that is what I have done in other MDLs and that

1 seems to have always worked out. But, that is the reason
2 for that. It's my schedule. I am trying to balance some
3 fairness with the lawyers on both sides in that case.

4 So, other than what we discussed and our agreement
5 to do a number of things between now and then, where does
6 that leave the Plaintiffs today?

7 MR. FLOWERS: I think that leaves us finished,
8 Your Honor.

9 MS. WOODWARD: Nothing further, Your Honor.

10 MR. CAMPILLO: One thing, if I could? I
11 apologize.

12 THE HONORABLE JUDGE FRANK: Sure.

13 MR. CAMPILLO: I just want to be clear, on the
14 mediation plan that Mr. Griffin discussed, that we urge
15 those Plaintiff lawyers who are interested in participating
16 in that plan to let the PLCC and us know, because that might
17 help, as one factor to consider in how we select those
18 cases, that hopefully can be mediated in May.

19 THE HONORABLE JUDGE FRANK: Well, and as we
20 discussed in chambers, there is some other -- there are some
21 other issues. And I may have touched on it here as we began
22 in the court.

23 If there are -- if one or both parties say that,
24 well, can we reach out in some confidential or ex parte way,
25 whether that is as to Judge Noel or myself, sometimes even

1 though I know that in New Jersey there has been some of
2 those discussions with -- well, and some MDLs, too.

3 I have had the private discussions, as long as
4 people aren't concerned it interferes with anything on the
5 merits pending in the case or decisions for the Court to
6 make; obviously, we may be suggesting, separate from the
7 timing issue, if there is some other mode of settlement,
8 ranging from having settlement counsel on each side to other
9 issues, we won't be bashful about saying so. And I am going
10 to be recontacting New Jersey, too, because, I mean,
11 hopefully it is more than just words coming out of a Judge's
12 mouth here in Minnesota, that the whole emphasis on
13 coordination, cooperation, communication -- not just with
14 New Jersey but that is where -- we will do our best and
15 hopefully we will get some, bear some good results on the
16 conference calls, and so forth, in the next -- apart from
17 the timeline issue we will deal with here.

18 So, yes. And I will just confirm that you had
19 raised that issue and suggested it in chambers, as well.
20 Any further response on those issues at this time for
21 Plaintiff or Defense?

22 MR. FLOWERS: No, Your Honor.

23 MR. GORDON: No. Thank you, Your Honor.

24 THE HONORABLE JUDGE FRANK: Ms. Woodward?

25 MS. WOODWARD: No, Your Honor.

1 THE HONORABLE JUDGE FRANK: Are you related to a
2 gentleman named Dave Woodward?

3 MS. WOODWARD: Not to my knowledge.

4 THE HONORABLE JUDGE FRANK: He's -- I think
5 he's -- well, I went to college with him. He is a producer
6 for a public TV station in Des Moines, Iowa, but -- and you
7 are saying definitely not.

8 MS. WOODWARD: Probably not.

9 MR. FLOWERS: Not Lee Woodward, either.

10 THE HONORABLE JUDGE FRANK: We will try to do our
11 best to get everything current on the website and keep all
12 lines of communication open, and we will be hearing from you
13 all shortly. And you will be hearing from us.

14 And for those of you who came back on the phone,
15 we apologize. We are not quite sure what happened with the
16 disconnect. And happy first day of spring. I guess it is
17 technically here. It was 11:00 Central Standard Time, or
18 maybe it is 11:00 everywhere in the -- whenever that comes.
19 We will stand in recess. So, thank you all.

20 ALL COUNSEL: Thank you, Your Honor.

21 THE HONORABLE JUDGE FRANK: Enjoy the day
22 everybody.

23 (Adjournment.)

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * *

I, Jeanne M. Anderson, certify that the foregoing
is a correct transcript from the record of proceedings in
the above-entitled matter.

Certified by: s/ Jeanne M. Anderson
Jeanne M. Anderson, RMR-RPR
Official Court Reporter